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April 30, 2019

Ex Parte

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: CenturyLink Petition for a Declaratory Ruling, Connect America Fund,
WC Docket No. 10-90; Developing a Unified Intercarrier Compensation Regime,
CC Docket No. 01-92

Dear Ms. Dortch:

On behalf of CenturyLink, on April 29, 2019, I met with Travis Litman, Chief of Staff and Senior Legal Advisor, Wireline and Public Safety for Commissioner Rosenworcel, in support of CenturyLink's petition for a declaratory ruling that "over the top" VoIP providers and their LEC partners perform the functional equivalent of end office switching and, accordingly, may collect end office local switching access reciprocal compensation under the Commission's rules.¹ In the discussion, I summarized CenturyLink's position, as set forth more fully in CenturyLink's previous filings in this proceeding and below.² Notably, now almost a year after CenturyLink filed its petition, it does not appear that any party actually disputes the fundamental premise of the petition: that end office switching charges apply to over-the-top VoIP calls, as discussed more fully below.

¹ See Petition of CenturyLink for a Declaratory Ruling, WC Docket No. 10-90, et al., (filed May 11, 2018).

² *Id.*; Reply of CenturyLink in Support of Its Petition for a Declaratory Ruling, WC Docket No. 10-90, et al. (filed July 3, 2018); Letter from John T. Nakahata, counsel to CenturyLink, to Marlene H. Dortch, FCC, WC Docket No. 10-90, et al., (filed Mar. 4, 2019) (*CenturyLink Mar. 4 ex parte*); Letter from John T. Nakahata, counsel to CenturyLink, to Marlene H. Dortch, FCC, WC Docket No. 10-90, et al., (filed Nov. 28, 2018). A copy of the *CenturyLink Mar. 4 ex parte* was provided to Mr. Litman.

First, as CenturyLink has explained, the Commission intended in the *Transformation Order*³ for its new VoIP-PSTN framework to encompass both fixed (facilities-based) and nomadic (over-the-top) VoIP. Although it had sought comment on whether its framework should distinguish between fixed and nomadic VoIP—and despite AT&T’s urging it to do just that—the Commission declined to do so, and it expressly rejected AT&T’s argument that permitting carriers to impose access charges in connection with over-the-top traffic would amount to imposing access charges on the Internet.⁴ Instead, even though it had initially proposed applying its framework only to interconnected VoIP (which itself would have included over-the-top VoIP), it decided to apply its framework to *all* VoIP-PSTN traffic.⁵ Doing so was important to address the Commission’s concern that the then-existing “uncertainty” regarding compensation “may be affecting IP innovation and investment” and to ensure that its regulatory framework would not slow the spread of new, innovative services by placing them at a regulatory disadvantage as compared to “very limited VoIP products that merely mimic the circuit-switched offerings of the past.”⁶ Accordingly, the only reasonable conclusion is that the Commission anticipated that LECs would not be prohibited from assessing end office switching charges on over-the-top traffic.

Second, the rule Verizon would have the Commission adopt is untenable. To be clear, although this proceeding ostensibly involves a dispute about whether end office switching charges can be applied to calls involving over-the-top VoIP traffic,⁷ it does not in fact seem disputed that end office switching charges can, indeed, lawfully apply to VoIP calls delivered over-the-top of an Internet connection to (or from) the called (or calling) individual. As CenturyLink has previously noted, under Verizon’s proposed “bright line” test, a LEC may impose end office switching charges on calls involving an enterprise’s remote employee working at home and connecting to the enterprise’s network via the employee’s own home Internet connection, if (according to Verizon) the enterprise has purchased connectivity between the enterprise’s own network and the VoIP server from the LEC.⁸

³ Connect America Fund, WC Docket No. 10-90, et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17,663 (2011) (*Transformation Order*).

⁴ See *CenturyLink Mar. 4 ex parte* at 9-11.

⁵ See *id.*

⁶ Connect America Fund, WC Docket No. 10-90, et al., Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 26 FCC Rcd 4554 ¶ 611 (*Transformation NPRM*); see also, e.g., *Transformation Order* at ¶¶ 941-42, 968.

⁷ See Letter from Alan Buzacott, Verizon, to Marlene H. Dortch, FCC, WC Docket No. 10-90, et al., at 1 (filed Feb. 7, 2019) (“[A] LEC and its VoIP provider partner do *not* perform the function equivalent of end office switching when they route over-the-top VoIP traffic.”) (emphasis in original) (*Verizon Feb. 7 ex parte*).

⁸ See *CenturyLink Mar. 4 ex parte* at 3 (citing *Verizon Feb. 7 ex parte* at 1-3). No other party has disagreed with Verizon or CenturyLink, either.

Verizon's argument, then, has to be that there are *some* over-the-top VoIP calls for which end office switching charges are not applicable. Its proposed rule must accordingly be intended to distinguish which calls are subject to end office switching charges and which are not. According to Verizon, whether end office switching charges apply to over-the-top VoIP calls depends on whether the specific device that has connected to the VoIP server connects over a facility purchased from the LEC or the VoIP partner or whether it was purchased separately (i.e., whether the customer has "brought its own bandwidth").⁹ As CenturyLink has noted, such a rule would lead to absurd results, such as end office switching charges being dependent on which entity sends the bill to the customer for the same access facility or Internet service, or whether an employee of an enterprise sitting in a coffeeshop has keyed in a VPN code.¹⁰ Moreover, neither Verizon nor AT&T claims to actually apply such distinctions itself, and in fact it appears no carrier does so. Indeed, no carrier has explained how it would be possible to implement such a rule. Of course, if the Commission were to endorse such a rule, it must explain (i) why such a distinction is nevertheless reasonable and (ii) how that distinction comports with existing law. As CenturyLink has explained, that is not possible.

Third, the precedent AT&T and Verizon rely on in support of their proposed rule in fact supports CenturyLink's position, and, moreover, the holding of the *RAO 21 Reconsideration Order*¹¹—that a switch must have the capability to redirect the voice channel on its own—cannot be reconciled with AT&T's assertion that the ISP actually performs the end office switching function, because the ISP does not have the capability to redirect the voice channel.¹²

Finally, a straightforward reading of incumbent LEC tariffs confirms that such tariffs apply to over-the-top VoIP traffic—which conclusively answers the question of whether a competitive LEC performs the "functional equivalent" of incumbent LEC switching when the competitive LEC handles over-the-top VoIP traffic in similar arrangements.¹³ CenturyLink has had both enterprise customers and VoIP provider customers that have purchased Primary Rate Interface (PRI) services from its incumbent LEC affiliates. For both types of customers, enterprises and VoIP providers, identical services were provided by CenturyLink's incumbent carriers, and in both cases, CenturyLink assessed end office switching charges pursuant to the terms of CenturyLink's incumbent LEC tariff. AT&T and Verizon's argument appears to be that "over the top" traffic *cannot* be subject to end office switching charges when the PRI was purchased by a VoIP provider (at least, if the PRI was sold by a CLEC), but *can* when the PRI was purchased by an enterprise. But that argument not only cannot be reconciled with how incumbent LEC tariffs, including not just CenturyLink's AT&T's and Verizon's own tariffs, have applied for many years, it has no other basis in law or reason—it is akin to saying that end

⁹ *Verizon Feb. 7 ex parte* at 2-3.

¹⁰ *See CenturyLink Mar. 4 ex parte* at 2-4.

¹¹ *See* Petitions for Reconsideration and Applications for Review of RAO 21, Order on Reconsideration, 12 FCC Rcd 10,061 (1997) (*RAO 21 Reconsideration Order*).

¹² *See CenturyLink Mar. 4 ex parte* at 4-8.

¹³ *See id.* at 11-14.

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office switching charges apply to calls made by left-handed people, but not by right-handed people. The Commission may not, consistent with the Administrative Procedure Act, adopt such a rule.

Please contact me if you have any questions regarding this matter.

Respectfully submitted,

Joseph C. Cavender

cc: Travis Litman